

STATEMENT

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BEFORE THE

HOUSE EDUCATION COMMITTEE
SUBCOMMITTEES ON 21ST CENTURY COMPETITIVENESS AND
SELECT EDUCATION

REGARDING

TRACKING INTERNATIONAL STUDENTS IN
HIGHER EDUCATION:
POLICY OPTIONS AND IMPLICATIONS FOR STUDENTS

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE,

On behalf of Commissioner Ziglar, thank you for the opportunity to address the Committee on the topic of foreign student visas. Although the Commissioner could not be here in person, I am pleased to discuss with you the processes and requirements currently in place for international students to study in the United States.

I would like to begin by placing our current work on tracking foreign students into an historical context. The growth in international education has significantly benefited the U.S. economy and brought continued recognition of the superiority of the U.S. higher education system. Foreign student programs have been found to serve U.S. foreign policy objectives by exposing nationals of other countries to the institutions and culture of the United States, by helping to cement alliances with other countries, and by transferring knowledge and skills to other countries, particularly developing countries. This growth has also resulted in increased security concerns over the past several decades.

For example, the INS investigated certain foreign students present in the United States after the 1972 attacks at the Munich Olympics, especially those foreign students enrolled in aviation schools. Following the hostage-taking incidents at the U.S. Embassy in Tehran in 1979, the INS registered (in person) all Iranian students present in the United States.

In December 1981, Congress addressed the issue of foreign students when it enacted Public Law 97-116, the Immigration and Nationality Amendments of 1981, creating the M-1 nonimmigrant classification for vocational students and specifying the types of educational institutions that were eligible to accept F-1 students. The motivation behind the creation of the then new M-1 classification was to afford maximum oversight over this group of students.

In 1982, based on the Iranian hostage incident, changes in immigration law, a growing volume of foreign student visa holders, and a 1981 report issued by the President's Management Improvement Council on foreign students in the United States, the INS proposed revamped regulations to monitor foreign students and established an automated system to maintain data on this population. With the Student Schools System, the INS proposed to confer greater authority and responsibility on schools approved to accept F-1 and M-1 non-immigrants. Through regulation, not statute, the INS and the schools formed an important partnership to monitor foreign students. While the INS delegated certain authorities to the schools to respond to the growing number of student applications and help streamline the processes, the INS also required all schools to reapply for certification to accept foreign students. The INS also mandated that all approved schools maintain records on the foreign students enrolled at their institutions. These measures included: 1) allowing the schools to notify the INS that a foreign student had transferred from one approved school to another in lieu of an adjudication of the transfer, 2) instituting "Duration of Status" to eliminate requests for extension to proceed from one level of study (baccalaureate) to another (Master's), and 3) permitting the schools to authorize employment when it was a necessary component of the curriculum.

In 1983, the INS finalized these regulations and began the school re-certification process. The INS also required, for the first and only time, that all schools report information on all F and M visa students enrolled at their institutions.

Since 1983, many dedicated school officials who work with foreign students have raised concerns about acting as counselor and confidant to foreign students on one hand, while acting as "policeman" for the INS on the other. This has continued to be a source of tension for many throughout the academic community.

For 15 years, there were no substantive changes to these foreign student visa programs. Then, as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), two student-related provisions were enacted. First, Congress addressed what was viewed as a growing problem for taxpayers who were bearing the financial cost to educate so-called "parachute kids" those children who were dropped off in the United States by parents or guardians to obtain an education. Congress limited the issuance of student visas by prohibiting aliens in public elementary schools or publicly funded adult

education courses from obtaining an F-1 visa. Congress also specified that aliens could obtain an F-1 visa to attend public high school for one year provided they reimbursed the local school system for the full, unsubsidized amount of one year's education. (There is a related bar to admission for students who violate this provision). Second, Congress enacted a provision to require the INS to develop a student information tracking system that came to be known as CIPRIS, the Coordinated Interagency Program Regulating International Students.

Overview of the Student Visa Process

Although the focus of my testimony today is on foreign students attending academic institutions, one must note that the international student population includes aliens who are enrolled in programs outside of the traditional university or college environment. Many are admitted into the United States in order to pursue study at intensive language programs or vocational or trade institutions, or to participate in cultural exchange programs. All student visas, however, are temporary, nonimmigrant visas, regardless of the type of program in which the alien is enrolled. Thus, visa applicants must establish that they have no intention of abandoning their residence in their home countries, and are expected to depart from the United States upon completion of their studies.

There are currently three visa categories into which international students are classified. The F-1 nonimmigrant visa is issued to aliens wishing to pursue academic or language studies in INS-approved educational institutions in the United States. The J-1 nonimmigrant visa is issued to aliens wishing to participate in Department of State-approved exchange visitor programs, and the M-1 nonimmigrant visa is issued to aliens engaging in vocational, trade or other nonacademic studies at INS-approved institutions. The type of visa granted to an alien depends on the type of program in which he or she chooses to enroll.

One must keep in mind that not all educational institutions in the United States are legally able to accept foreign students in their programs. Only those institutions to which the INS has granted approval may enroll F-1 and M-1 nonimmigrant students. The requirements governing the INS approval process to accept foreign students are established by regulation. In general, a school applies for INS approval by submitting a completed Form I-17, Petition for Approval of School for Attendance by Nonimmigrant Students, with the INS district office having jurisdiction over the area where the school is located. This application must be accompanied by supporting documents, as outlined in the regulations. These documents include the school's financial data; the nature of its facilities for study and training; educational, vocational, or professional qualifications of the teaching staff; the salaries of instructors, and the school's attendance and scholastic grading policy.

Upon receiving the petition, the district office evaluates all documents submitted and may conduct a site visit to verify that the applicant is: 1) a bona fide school; 2) an established institution of learning or other recognized place of study; 3) in possession of the necessary facilities, personnel, and finances to conduct instruction in recognized courses; and 4) in fact, engaged in instruction in those courses. Site visits may include interviews of relevant parties at the applicant school. If approved, the district office notifies the applicant school of its decision and issues it a unique identifying number.

Obtaining the Foreign Student Visa

An alien seeking an education in the United States must first apply to each school he or she would like to attend. Upon accepting the alien's application, the educational institution issues to that alien an INS Form I-20. Thus, if an individual has been accepted at ten institutions, for example, that individual receives one Form I-20 from each institution that accepts him or her. INS rules prohibit an educational institution from issuing an I-20 to a student who does not satisfy the institution's admission requirements.

Upon selecting the school or program he or she will attend, the foreign student applies for his or her student visa from the U.S. Embassy or Consulate with jurisdiction over his or her place of permanent residence. In order to obtain a visa that allows the alien to travel to the United States, the alien must submit a visa application that includes the alien's passport, photograph, Form I-20, requisite proof of financial support, and any other relevant documents. Each student visa applicant must pay a nonrefundable visa application fee.

A U.S. Department of State consular officer reviews the documentation and, where necessary, conducts an in-person interview. The Consular Lookout and Support System (CLASS) is queried for potential problems associated with the alien applicant. If granted a nonimmigrant student visa, the consular officer places in the alien's passport a visa with the appropriate classification and notes the name of the school that the alien has indicated he or she will attend. Additionally, the consular officer places that Form I-20 in a sealed envelope marked to the attention of the INS officer. Any remaining Form I-20 forms received by the student from other schools are considered invalid at this time.

Obtaining Admission to the United States

The INS becomes involved in the student visa process at the moment the alien arrives at a U.S. Port of Entry (POE) and seeks admission to the United States. Upon arrival at the POE, the foreign student must present his passport, Form I-20, and accompanying documents to the INS inspector. The inspector examines all documents presented, and if satisfied that the applicant is admissible, issues the foreign student a completed I-94 Entry/Departure form. The inspector stamps the standard two copies of the Form I-20, the passport, and the completed I-94 form, and records the I-94 admission number in the student's passport and on both copies of the Form I-20. The alien is given the student copy of the Form I-20 and the departure portion of the I-94. The INS copy of the Form I-20 and the arrival portion of the I-94 are retained for internal distribution and data entry into the appropriate systems by the INS. The majority of F-1 academic students are admitted into the United States for "duration of status" notated as "D/S" on their I-94 forms. This status allows the foreign student to remain in valid nonimmigrant status so long as he or she is meeting all relevant statutory and regulatory requirements. Thus, an F-1 student who is admitted for "duration of status" is considered to be maintaining lawful nonimmigrant status for the entire time he or she remains in the United States while making normal progress toward completing his or her program, including the time in which the F-1 student has elected to pursue additional study beyond the program for which he or she was initially admitted (e.g., 4 years for a bachelor's degree, followed by an additional 3 years for a Master's degree, for a total of 7 years in the United States.)

This general process for obtaining a foreign student visa and admission is similar for all aliens seeking to pursue study in the United States, regardless of the type of program in which the alien enrolls. There are, however, differences among the F, J, and M nonimmigrant procedures. Primary differences include: aliens admitted in an M-1 nonimmigrant status for vocational or nonacademic study will be given an I-94 arrival/departure form with a date-specific stamp rather than "duration of status"; and aliens seeking to participate in an exchange visitor program will be issued the Form IAP-66 by the institution (rather than the Form I-20) to indicate eligibility for the J-1 nonimmigrant status. I would note that the Department of State administers the exchange visitor programs and issues additional regulatory requirements regarding eligibility for, and continued participation in, those exchange programs.

Monitoring of International Students within the United States

Once a foreign student arrives at the school, his or her Form I-20 provides instructions as to the name and address of the school official to whom the student is to report. The school official responsible for international students is required to maintain records of specified events on each foreign student enrolled at that institution, as required by statute and INS regulation, throughout the course of the student's stay in the United States. These events include program end dates, fields of study, credits completed per semester, and any employment in which the student may engage. By regulation, educational institutions are required to provide this information to the INS upon request.

Improving the Student Visa Process

The foreign student visa process I have just described is paper-based and depends on the movement of paper forms. As a result, the INS recognizes that it is vulnerable to both inaccurate data and fraud at various stages of the process. Although the INS currently maintains limited records on foreign students and is able to access that information on demand, that information is on old technology platforms that are insufficient for today's need for rapid access. That is why we are moving forward with the Student Exchange Visitor Information System (SEVIS), formerly known as CIPRIS. Objections, primarily by the academic establishment, have delayed implementation of the student tracking fee necessary to complete

deployment of the system. However, with the events of September 11, that objection has nearly disappeared and the INS, with your help, will meet, and intends to beat, Congress' deadline of January 2003 to start implementation of SEVIS. In that connection, the Administration is requesting \$11.7 million from the emergency supplemental appropriations bill to fully fund the first year costs of this system. INS will then develop and implement a fee structure for future year costs. Full implementation of SEVIS will revise the process by which foreign students gain admission to the United States, resulting in improved integrity of the overall student visa process.

In order to continue an open dialogue with other Federal organizations that might be involved with international students, the INS has had ongoing discussions with the Department of Education and the Department of State. As a result of these meetings, the INS currently is investigating the feasibility of sharing foreign student data among our agencies so that we may each benefit from the available information and the systems retaining that data.

The Limits of Technology

There is no quick fix, technological or otherwise, to the challenges we face. We must work with advanced technology and do all we can to improve our systems. But we should not mislead ourselves into thinking that technology alone can solve our problems. Technology must be coupled with a strong intelligence- and information-gathering and distribution systems if we are to leverage our resources and maximize our capabilities. That will require seamless cooperation among the many government agencies involved.

If we are to meet the challenges of the future, we need to make changes at the INS and we are in the process of making those changes. The structure of the organization and the management systems that we have in place are outdated and, in many respects, inadequate for the challenges we face. Our information technology systems and related processes must be improved in order to ensure timely and accurate determinations with respect to those who wish to enter our country and those who wish to apply for benefits under our immigration laws. The management restructuring of the INS is on its way a mandate the President has given this agency and the improvement of our information technology systems is moving ahead.

Looking Ahead

It has been said that after September 11 "everything has changed.." I hope that is not true. America must remain America, a symbol of freedom and a beacon of hope to those who seek a better life for themselves and their children. We must increase our security and improve our systems, but in doing so we must not forget what has made this nation great our openness to new ideas and new people, and a commitment to individual freedom, shared values, innovation, and the free market. This includes providing international educational opportunities that benefit both the United States and the many nations around the world that send their young people here to learn. Thank you for this opportunity to appear, Mr. Chairman. I look forward to your questions.